

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0065
Sales and Use Tax
For The Tax Period 2005

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-5-9(d); 45 IAC 2.2-5-15; 45 IAC 2.2-5-16(d)(1); *Indiana Dep't. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the assessment of use tax on nonreturnable wrapping materials and containers.

STATEMENT OF FACTS

The Taxpayer is an industrial processor that applies water based coatings to steel and aluminum coils owned by third party manufacturers. This process has several steps. First the product is brushed, cleaned, rinsed with hot water, and air dried. Then the Taxpayer applies the coating. After coating, the coils are rolled, banded, and shrinkwrapped before shipment to the manufacturer's customers via common carrier. The Department assessed additional use tax, penalty and interest. The Taxpayer protested the assessment of use tax on nonreturnable packaging. A hearing was scheduled. The Taxpayer did not appear for the hearing. Therefore, this Letter of Findings is based on the documentation in the file.

I. Sales and Use Tax – Imposition.

Discussion

All tax assessments are presumed to be accurate. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dep't. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

The Taxpayer argues that its purchases of nonreturnable wrapping materials and containers are exempt pursuant to IC § 6-2.5-5-9(d) as follows:

Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for selling the contents that he adds.

The statute is further explained at 45 IAC 2.2-5-16(d)(1) as follows:

Nonreturnable wrapping material and empty containers. To qualify for this exemption, nonreturnable wrapping materials and empty containers must be used by the purchaser in the following way;

- (A) The purchaser must add contents to the containers purchased; and
- (B) The purchaser must sell the contents added.

In this case, the Taxpayer purchased nonreturnable packaging such as shrink wrap, banding material, and cardboard. The Taxpayer, did not, however, fill the nonreturnable packages with the product that the Taxpayer produced for sale. Rather, the Taxpayer filled the nonreturnable packaging with products produced by other manufacturers. Those manufacturers owned the products while the Taxpayer cleaned and coated the products. Those manufacturers also sold the products. The Taxpayer did not manufacture and sell the product that it placed in the nonreturnable containers. Therefore, the Taxpayer's use of the nonreturnable containers does not qualify for exemption from the use tax. The Department properly imposed the use tax on the nonreturnable containers.

FINDING

The Taxpayer's protest is respectfully denied.